

C10 249  
PATENT COOPERATION TREATY

COPY

From the:  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:  F.B. Rice & Co. 139 Rathdowne Street CARLTON VIC 3053		<div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 150px;"> <b>RECEIVED WITH THANKS</b>   <b>14 NOV 2003</b>   <b>F.B. RICE &amp; CO.</b> </div>	
		<b>PCT</b> <b>WRITTEN OPINION</b> (PCT Rule 66)	
		Date of mailing (day/month/year) <b>12 NOV 2003</b>	
Applicant's or agent's file reference <b>501762</b>		<b>REPLY DUE</b> within <b>TWO MONTHS</b> from the above date of mailing	
International Application No. <b>PCT/AU03/01140</b>	International Filing Date (day/month/year) <b>4 September 2003</b>	Priority Date (day/month/year) <b>4 September 2002</b>	
International Patent Classification (IPC) or both national classification and IPC <b>Int. Cl. <sup>7</sup> A61B 5/00; A61N 1/08; H04R 25/00</b>			
Applicant  <b>COCHLEAR LIMITED et al</b>			

1. This written opinion is the **first** drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application
3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:  
**4 January 2005**
4. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established.

**If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also** For an additional opportunity to submit amendments, see Rule 66.4.  
 For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.  
 For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer <div style="text-align: center; margin-top: 10px;">   <b>SERINEL SAMUËL</b> </div> Telephone No. (02) 6283 2382
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**WRITTEN OPINION**

International application No.  
PCT/AU03/01140

**I. Basis of the opinion**

1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,  
pages , as amended under Article 19,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the sequence listing part of the description:  
pages , as originally filed  
pages , filed with the demand  
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

**WRITTEN OPINION**

International application No.

**PCT/AU03/01140**

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims Nil	<b>YES</b>
	Claims 1-59	<b>NO</b>
Inventive step (IS)	Claims Ni;	<b>YES</b>
	Claims 1-59	<b>NO</b>
Industrial applicability (IA)	Claims 1-59	<b>YES</b>
	Claims Nil	<b>NO</b>

**2. Citations and explanations**

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1: US 6212431  
 D2: US 6088619  
 D3: WO 99/18879  
 D4: US 5314453

Novelty (N)

The citations D1-D4, each disclose features conforming exactly with the features defined by the claims. Further, the explicit teaching of each citation is to employ the features as instantly claimed.

Inventive Step (IS)

As above.